IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT No. 2226 of 1984.

Paramount Kum Kum Pvt.Ltd.
A company incorporated under
the Companies Act, having its
registered office at Kalpataru,
71, Nutan Laxmi Society,8th Road,
Juhu, Vile Parle Development
Scheme, Bombay- 400 049. ... Plaintiffs.

V/s.

1. V.Products (India), a
   partnership firm registered
   under the Indian Partnership
   Act, carrying on business at
   78, Basti Harphool Singh,
   Delhi- 110 006.

2. Yarlay Sales Agencies,
   T-233-A, Nawab Road,
   Basti Harphool Singh,
   Delhi- 110 006.

3. Nirmal Sales Corporation,
   Shop No.2, Borichawadi,
   Shradhanand Road,
   Vile Parle (East),
   Bombay- 400 057. ... Defendants.

Ms.Smita Vora i/b. Shantilal & Co.
for the plaintiffs.

None for the defendants.

CORAM : V.C.DAGA, J.

DATED : 13th January 2006.

JUDGMENT (*EX PARTE*):

This suit is filed by the plaintiffs claiming to be entitled to use various trade marks that were used for their product known as "Paramount Products".

2. The plaintiffs also claim that owing great excellence of quality of the products of the plaintiffs and extensive sales and publicity; the plaintiffs product has attained wide popularity and their trade marks have got due recognition in the market. Their goods by virtue of their trade marks have become exclusively associated with the traders, consumers and public. They got associated with the trade mark on the cartons "Shingar" in English script on one panel and in Hindi, Bengali and Tamil on another panels in a white background, the specimen of which is produced on record.

3. The plaintiffs have also claimed that their predecessor, sometimes in the month of October, 1970, had introduced in the market a new carton packing for their `deluxe' kum kum product. The said packing of carton consisting of four panels;

¾th part of which is on white background and in the remaining 1/3rd portion of each of the panels (on the top portion) is in a solid Red colour spot shown in 1.5 c.m. In size. In the centre on each panel written words are “Deluxe Kum Kum”, which are in English, Hindi, Bengali and Tamil scripts. In the bottom half of each of the four panels, a word “Shingar” is written vertically in golden colour in English, Hindi, Bengali and Tamil scripts. The said carton also contains the kum kum of a particular colour similar to that of the central spot. On the top panel of the carton mark `S' encircled within a circle surrounded by dots is shown. On the extended leaf of top panel the name of the said predecessor of the plaintiffs is written and on the extended leaf of down panel the manufacturing licence number of the said predecessor is given. The specimen copy of this carton for its product “deluxe Kumkum” depicting the said trade marks “Shingar” and the letter `S' written in a particular style enclosed within a circle surrounded by dots is also produced on record.

4. The plaintiffs claim that the said carton has a distinctive get up, layout and design. The predecessor of the plaintiffs extensively used the said carton. According to the plaintiffs, the said carton was designed by one artist M.Krishna Vishnu Balvelkar under the contract of employment with the

said firm. A photocopy of the certificate dated 17th January, 1985 issued by the Joint Managing Director of an advertising agency, namely; Everest Advertising Private Limited, is placed on record; wherein it is mentioned that the art work was prepared by one Mr.Krishna Vishnu Balvelkar, who was their employee. According to the plaintiffs, the plastic container containing the deluxe kum kum inside the carton is also of a distinctive shape, design and colour. The lower half of the said container represents the word “Shingar” in a special type of script. According to the plaintiffs, the trade mark “Shingar” and Shingar carton with container, produced at Exh.`A' and `B' to the plaint have been used by the plaintiffs very extensively through out India from 1971 to 24th November, 1983 and, thereafter, from 24th November, 1983 till date.

5. The plaintiffs claim that the business and trade marks of the firm of its predecessor have been taken over by them and, now, it vests in the plaintiffs. The plaintiffs also claim that they have spent considerable amount on advertisement and publicity of their product; which is being sold under the trade mark referred to hereinabove. The documents in support thereof are produced on record. The plaintiffs have stated that owing to the great excellence of quality of the goods sold under the said trade mark and the advertisements and publicity referred to hereinabove, the trade

mark “Shingar” and distinctive carton and the plastic container became exclusively associated with the said firm and the plaintiffs. The plaintiffs, consequently, acquired a unique reputation and a valuable goodwill in the trade marks, carton and plastic container referred to hereinabove.

6. The plaintiffs have also stated that the registration of the trade mark consisting of the word “Shingar” under No.301554 B is still valid and in force. The plaintiffs have produced on record photocopies of certificates issued by the Registrar of Trade Marks showing renewal of their trade mark for the period from 19th December, 1974 to 19th December, 1981; from 19th December, 1981 to 19th December, 1988; from 19th December, 1995 to 19th December, 2002 and; thereafter up to 2009. In other words, registration of the trade mark has been renewed from time to time and is valid up to 2009.

7. The plaintiffs have stated that they have been brought on record in the capacity of subsequent proprietor and registered owner of the said trade mark.

8. The plaintiffs contend that on account of unique reputation acquired by the product of their predecessor firm and that of the plaintiffs, which is being copied sold under the trade mark

“Shingar”, they are being by other manufacturers. As a matter thereof, according to the plaintiffs, numerous attempts were made by various kum kum manufacturers all over India to imitate and infringe their trade mark or adopt one or other features of the plaintiff's trade mark put on the said cartons and the plastic containers with a view to pass off or trade upon the reputation of the plaintiffs' products made by them deceptively similar to that of the plaintiffs.

9. According to the plaintiffs, their predecessor came across some of the instances of counterfeit Kum Kum products marketed in a carton and plastic container of the same get-up, design and colour scheme; closely similar to that of their products; which, ultimately, resulted in filing complaint before the Metropolitan magistrate Court, Esplanade sometime in the year 1983, pursuant to which, raids were conducted. That is how, the plaintiffs claim to have acquired complete addresses of defendant Nos.1 and 2; who were infringing and passing off the plaintiff's trade mark and product.

10. The plaintiffs claimed to have issued notice to defendant Nos.1 and 2 through their trade mark agent on 27th February, 1984 calling upon them to desist from the use of or offending trade mark and to comply with the other requirements stated therein. Copy of the notice is produced on

record. The defendant No.1 in spite of above notice refused to comply with the requirements of the said notice issued by the plaintiffs, which, ultimately, led to filing of this suit for damages and injunction.

11. The plaintiffs have claimed decree of perpetual injunction against the defendants restraining them as kum kum traders or any other traders from using in relation to kum kum their trade mark “Shingar” or any other trade mark which is deceptively similar to the trade mark of the plaintiffs, so as to prevent them from committing infringement of their trade mark No.301554B renewed from time to time with further decree of perpetual injunction restraining the defendants from using in relation to their cosmetic products including kum kum the trade mark “Shingar” and/or any similar other similar mark or get-up so as pass off or enable others to pass off their goods as of plaintiffs' goods sold under their trade mark “Shingar”. The plaintiffs have also claimed decree of perpetual injunction against the defendants restraining them from infringing the plaintiffs' copyright in the artistic work in the carton specimen whereof are Exh.`A' registered under the Copyright Act, 1957 under No.A16088/76 by making or using the carton or offering for sale or exposing for sale or cause without the licence of the

plaintiffs any carton, specimen whereof are at Exhs.`H' and `I' to the plaint. The plaintiffs have also claimed damages for passing of and for infringement of their trade mark and copyright in the sum of Rs.50,100/-.

12. In spite of suit summons, the defendants did not appear to contest the suit. With the result, by an order dated 21st July, 2005 and subsequent order dated 8th December, 2005, suit was ordered to proceed *ex parte* against the defendants. No written statement was filed on record. The defendants are not represented by any Advocate. The plaintiffs were, however, directed to file affidavit of evidence along with compilation of documents to their case. The plaintiffs have, accordingly, filed affidavit dated 8th December, 2005 of one Shri Bharatbhai Jamnadas Modh, the authorised attorney of the plaintiffs in support of the suit claim. Since there is absolutely no contest; since nobody is appearing for the defendants; since the allegations made in the plaint are not disputed by any of the defendants, I do not see any difficulty in granting decree in favour of the plaintiffs and against the defendants in terms of prayer clauses (a) to (d). So far as prayer clauses (e) and (f) are concerned, for want of evidence, suit to that extent is dismissed; for want of evidence. Hence order.

O R D E R

Suit stands decreed in favour of plaintiffs in terms of prayer clauses (a) to (d). Suit stands dismissed, so far as prayer clauses (e) and (f) are concerned.

Decree be drawn accordingly.

(V.C.DAGA, J.)